

### **REMARKS**

In the Office Action, the Examiner rejected claims 1-18, 20-23, 31-35 and 40-49. This response neither amends nor cancels any claims. As such, claims 1-18, 20-23, 31-35 and 40-49 remain pending. Applicant would like to point out that the instant application was filed more than six years ago, on November 26, 2003. Since this original filing, prosecution of this matter has included two separate filings of a Notice of Appeal by Applicant based on deficiencies in the prior art applied by the Examiner without a single continuation filed by Applicant. In both instances of the filing of the Notice of Appeal, a panel decision was issued prior to the matter being presented to the Board in which it was determined that the rejections by the Examiner were improper.

The current Non-Final Office Action is the most recent attempt by the Examiner to reject the claims of the instant matter. However, as will be further discussed below, it appears that the Examiner has applied art that appears to be even less relevant to the pending claims than the art previously applied by the Examiner (and dismissed by two separate Panels as being insufficient to render the pending claims obvious). Accordingly, Applicant respectfully requests reconsideration and allowance of the pending claims in view of the following remarks. If however, allowance of the claims is not made in a subsequent communication by the Examiner, Applicant respectfully requests an interview with both the Examiner and the Supervisor of the Examiner, as Applicant respectfully submits that the Examiner is continuing to delay prosecution of the instant matter (currently over six years) by continuing to improperly apply prior art references that fail to describe, teach, and/or show all elements of the instant claims.

### **Claim Rejections under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 1-3, 5-10, 12, 13, 15-17, 20-23, 31-35, 40, 42, and 44-49 under 35 U.S.C. § 102(b) as anticipated by Collins, U.S. Pub. No. 2002/0029285 (hereinafter "Collins"). Applicant respectfully traverses this rejection.

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under Section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). The prior art reference also must show the identical invention “in as complete detail as contained in the ... claim” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Accordingly, Applicant needs only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

#### ***Omitted Features of Independent Claim 1***

Collins fails to anticipate all elements of independent claim 1. Independent claim 1 recites, *inter alia*, “a serving station *coupled to a medical diagnostic imaging system* for *controlling the imaging system* and configured to receive image data, the serving station comprising: *a scanner module configured to modify a scanning rate of the image data...*and a plurality of *network sensors in communication with the serving station.*” (Emphasis added.)

The present application is generally related to an imaging system 10 as part of a medical facility 12 that may include an imager 22, which allows for creation of image data indicative of regions of interest in a patient 24. *See* Specification, page 5, lines 21-27. Moreover, the medical facility 12 may further include, for example, a scanner module 66 that adjusts the scanning rate of, for example, the imaging system. *See id.* at page 14, lines 16-25; FIG. 2. Furthermore, aspects of the imaging system 10, such as scanning rate, may be controlled based on, for example, network conditions sensed by network sensors 54 and 56. *See id.* at page 15, lines 19-26; FIG. 3. In this manner, a remote operator workstation 16 may be used to remotely configure scanning operations in conjunction with generation of image data of a patient 24. *See* Specification, page 8, lines 4-10.

Independent claim 1 recites elements discussed above with respect to the Specification, specifically, a serving station *coupled to a medical diagnostic imaging system for controlling the imaging system* and configured to receive image data, the serving station comprising: *a scanner module configured to modify a scanning rate of the image data...* and a plurality of *network sensors in communication with the serving station*. In the Office Action, the Examiner suggested that Collins anticipates each of these recitations in independent claim 1. *See* Office Action, pages 3-4. Applicant respectfully disagrees.

It appears that Collins discloses a networked system that includes an application server that executes an application program and a subscribing client that locally displays the output of the application program. *See* Collins, paragraph 33. That is, Collins appears to teach that a client with a remote personal computer may interface with a program operating on an application server via user interface performed on the remote personal computer. *See id.* at paragraph 35. Examples of the programs that may be operated by the application server and visually presented to a user may include Microsoft Word and/or Microsoft Excel. *See id.* at paragraph 38. Thus, it appears that Collins teaches a system that allows for a program to be accessed by a remote user and displayed on a display of the remote user in a manner similar to if the program were being executed on workstation of the user independent of the application server.

However, while Collins appears to disclose an application server that executes an application program that is locally displayed for a user, Applicant has reviewed Collins and has been unable to find a single disclosure in Collins of a serving station *coupled to a medical diagnostic imaging system for controlling the imaging system* and configured to receive image data, as recited in independent claim 1. Indeed, it appears that this recitation has been wholly ignored by the Examiner, since no citation to Collins is given in the Office Action as disclosing the above referenced elements of independent claim 1. *See* Office Action, page 3.

Moreover, Applicant is unable to find any discussion in Collins relating to *a scanner module configured to modify a scanning rate of the image data* and configured to receive

image data, as recited in independent claim 1. While the Examiner has apparently read a discussion in Collins relating to the adaptation of a processing rate in response to changing conditions, nowhere in Collins is this processing rate described as analogous to a *scanner module* as recited in independent claim 1. Indeed, the processing rate disclosed by Collins is more aptly read to be the rate at which graphical data may be transmitted to a remote user workstation (*see* Collins, paragraph 14), not a *scanner module* configured to *modify a scanning rate of the image data* and configured to receive image data, as recited in independent claim 1.

Finally, the Examiner has cited all of paragraph 14 of Collins as teaching a plurality of *network sensors in communication with the serving station*, as recited in independent claim 1. *See* Office Action, page 4. However, Applicant has reviewed this cited portion of Collins and has failed to discern *any* elements that may be read as a plurality of *network sensors*, let alone a plurality of *network sensors in communication with the serving station*, as recited in independent claim 1. There are simply no sensors disclosed in the cited portion of Collins.

Accordingly, for at least the reasons set forth above, Collins fails to disclose all recitations of independent claim 1 and, therefore, cannot anticipate the claim under Section 102. Accordingly, Applicant respectfully requests withdrawal of the rejection and allowance of independent claim 1, as well as all claims depending therefrom.

#### ***Omitted Features of Independent Claim 15***

Collins reference fails to anticipate all elements of independent claim 15. Independent claim 15 recites, *inter alia*, “linking a serving station to a served station via a network, the serving station being *coupled to a medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data...measuring network performance between a serving station and a served station, wherein the serving station provides screen data *derived from an imaging system* to the served station; and adjusting the screen data transmitted to the served station automatically based on the measurement of the network performance, wherein adjusting the screen data comprises *modifying a frame buffer scanning*

*algorithm based on the network performance.”* (Emphasis added.)

As discussed above, Collins appears to disclose an application server that executes an application program that is locally displayed for a user. However, Applicant is unable to find a single disclosure in Collins of a serving station being *coupled to a medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claim 15. Again, it appears that this recitation has been wholly ignored by the Examiner, since the only citation by the Examiner to Collins is directed to a server agent for processing graphical data. *See* Office Action, page 8. However, the server agent is disclosed by Collins to be a software program that interfaces with a client to support remote display of an application program. *See* Collins, paragraph, 37. Moreover, Collins illustrates the server agent 160 as only being connected to network 140, and not to a *medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claim 15. Accordingly, Applicant respectfully submits that Collins cannot be read as disclosing all elements of independent claim 15.

Moreover, Applicant was unable to find any discussion in Collins relating to the serving station providing screen data *derived from an imaging system* to the served station, as recited in independent claim 15. As noted above, Collins simply does not describe an imaging system. Accordingly, it is improper for the Examiner to suggest that Collins may be read as describing the serving station providing screen data *derived from an imaging system* to the served station, as recited in independent claim 15.

Finally, the Examiner has cited paragraph 14 of Collins as teaching adjusting the screen data transmitted to the served station automatically based on the measurement of the network performance, wherein adjusting the screen data comprises *modifying a frame buffer scanning algorithm based on the network performance*, as recited in independent claim 15. *See* Office Action, page 9. However, Applicant has reviewed this entire portion of Collins and has failed to find any description in Collins that may be read as *modifying a frame buffer scanning algorithm based on the network performance*, as recited in independent claim 15.

There is simply no disclosure of modifying *any* scanning algorithm in the cited portion of Collins, let alone *modifying a frame buffer scanning algorithm based on the network performance*, as recited in independent claim 15.

Accordingly, for at least the reasons set forth above, Collins fails to disclose all recitations of independent claim 15 and, therefore, cannot anticipate the claim under Section 102. Accordingly, Applicant respectfully requests withdrawal of the rejection and allowance of independent claim 15, as well as all claims depending therefrom.

***Omitted Features of Independent Claims 31 and 40***

Collins fails to anticipate all elements of independent claims 31 and 40. Independent claim 31 recites, *inter alia*, “linking a serving station to a served station via a network, the serving station being *coupled to a medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data.” (Emphasis added.) Similarly, independent claim 40 recites, *inter alia*, “a serving station *coupled to a medical diagnostic imaging system for controlling the imaging system* and configured to receive image data.” (Emphasis added.)

Again, similar to the argument set forth above with respect to independent claim 15, while Collins appears to disclose an application server that executes an application program that is locally displayed for a user, Applicant is unable to find a single disclosure in Collins of a serving station being *coupled to a medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claims 31 and 40. The only citation by the Examiner to Collins with respect to this recitation is directed to paragraph 14 of Collins (*see* Office Action, pages 11 and 13), however, there does not appear to be *any* disclosure in paragraph 14 of Collins directed to a *medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claims 31 and 40. Instead, this portion of Collins appears only to disclose, at best, a server agent 160 that may be connected to network 140, but not to a *medical diagnostic imaging system for controlling the imaging system*, as recited in

independent claims 31 and 40. *See* Collins, FIG 3; paragraph 14. Accordingly, Applicant respectfully submits that Collins cannot be read as disclosing all elements of independent claims 31 and 40.

Therefore, for at least the reasons set forth above, Collins cannot anticipate either of independent claims 31 and 40 under Section 102. Accordingly, Applicant respectfully requests withdrawal of the rejection and allowance of independent claims 31 and 40, as well as all claims depending therefrom.

***Omitted Features of Independent Claim 42***

Collins also fails to anticipate all elements of independent claim 42. Independent claim 42 recites, *inter alia*, “a serving station configured to receive the image data and control the imaging system, the serving station comprising: *a scanner module configured to modify a scanning rate of the image data*; and an encoder module configured to modify an encoding format of the image data; a served station configured to receive modified image data from the serving station and to interact with the serving station via a network; and *a plurality of network sensors in communication with the serving station.*” (Emphasis added.)

Similar to the argument set forth above with respect to independent claim 1, Applicant is unable to find any discussion in Collins relating to a serving station comprising *a scanner module configured to modify a scanning rate of the image data* and configured to receive image data, as recited in independent claim 42. While the Examiner has apparently read paragraph 14 of Collins as generally discussing *a scanner module configured to modify a scanning rate of the image data* (*see* Office Action, page 14), Applicant cannot find a single description in the cited portion of Collins directed to *a scanner module configured to modify a scanning rate of the image data*, as recited in independent claim 42. Indeed, this portion of Collins appears to be merely discussing the adaptation of a processing rate in response to changing conditions, however, nowhere in this portion of Collins is the disclosed processing rate described as analogous to a *scanner module* as recited in independent claim 42. Indeed, the processing rate disclosed by Collins is more aptly read to be the rate at which graphical

data may be transmitted to a remote user workstation (*see* Collins, paragraph 14), not a *scanner module* configured to *modify a scanning rate of the image data*, as recited in independent claim 42.

Furthermore, the Examiner has cited all of paragraph 14 of Collins as teaching a plurality of *network sensors in communication with the serving station*, as recited in independent claim 42. *See* Office Action, page 15. However, Applicant has reviewed this cited portion of Collins and has failed to discern any elements that may be read as a plurality of *network sensors*, let alone a plurality of *network sensors in communication with the serving station*, as recited in independent claim 42. There are simply no sensors disclosed in the cited portion of Collins.

Accordingly, for at least the reasons set forth above, Collins fails to disclose all recitations of independent claim 42 and, therefore, cannot anticipate the claim under Section 102. Accordingly, Applicant respectfully requests withdrawal of the rejection and allowance of independent claim 42, as well as all claims depending therefrom.

**Claim Rejections under 35 U.S.C. § 103(a)**

In the Office Action, the Examiner rejected claims 4, 14 and 41 under 35 U.S.C. § 103(a) as unpatentable over Collins, in view of Tanenbaum, U.S. Patent No. 5,119,319 (hereinafter “Tanenbaum”) and claims 11, 18 and 43 unpatentable over Collins in view of Lang et al., U.S. Pub. No. 2004/0138754 (hereinafter “Lang”). Applicant respectfully traverses this rejection.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was,

independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002).

#### ***Omitted Features of Independent Claim 41***

Collins in view of Tanenbaum fails to teach or show all elements of independent claim 41. Independent claim 41 recites, *inter alia*, “a serving station *coupled to a medical diagnostic imaging system for controlling the imaging system* and configured to receive image data.” (Emphasis added.)

As set forth above with respect to the arguments regarding independent claims 15, 31, and 40, while Collins appears to disclose an application server that executes an application program that is locally displayed for a user, Applicant is unable to find a single teaching in Collins of a serving station *coupled to a medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claim 41. The only citation by the Examiner to Collins with respect to this recitation is directed to paragraph 14 of Collins (*see* Office Action, page 20), however, there does not appear to be *any* teaching in paragraph 14 of Collins directed to a *medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claim 41. Instead, this portion of Collins appears only to disclose, at best, a server agent 160 that may be connected to network 140, but not to a *medical diagnostic imaging system for controlling the imaging system*, as recited in independent claim 41. *See* Collins, FIG 3; paragraph 14.

Additionally, Tanenbaum fails to obviate the deficiency of Collins. Specifically,

Tanenbaum appears to be directed merely to a communication means comprising a receiver for receiving display information received at a terminal from a remote terminal and a transmitter for transmitting information to the remote terminal where it is displayed. *See* Tanenbaum, Abstract. However, Tanenbaum fails to teach a *medical diagnostic imaging system for controlling the imaging system* and being configured to receive image data, as recited in independent claim 41.

Accordingly, Applicant respectfully submits that neither Collins nor Tanenbaum, taken separately or in hypothetical combination, teach all elements of independent claim 41. Therefore, for at least the reasons set forth above, Applicant respectfully requests withdrawal of the rejection and allowance of independent claim 41.

### **Conclusion**

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. As previously noted in this response, if the Examiner believes that the above arguments are insufficient to place the application in condition for allowance, Applicant respectfully requests an interview with both the Examiner and the Supervisor of the Examiner. Additionally, if the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: December 28, 2009

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